

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CALIFORNIA COMMISSION ON PEACE OFFICER
STANDARDS AND TRAINING,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES TIMES COMMUNICATIONS LLC,

Real Party in Interest.

B162987

(L.A.S.C. No. BS075943)

OPINION AND ORDER
GRANTING PEREMPTORY
WRIT OF MANDATE

ORIGINAL PROCEEDING; petition for writ of mandate. Dzintra Janavs,
Judge. Petition granted.

Bill Lockyer, Attorney General, Jacob A. Appelsmith, Senior Assistant
Attorney General, Elizabeth Hong, Supervising Deputy Attorney General, Michael
E. Whitaker, Deputy Attorney General for Petitioner.

No appearance for Respondent.

Davis Wright Tremaine, Kelli L. Sager, Alonzo Wickers IV and Jean-Paul
Jassy; Karlene Goller for Real Party in Interest.

We hold that the Los Angeles Superior Court had no jurisdiction to hear and rule on this matter. Accordingly, we order the matter transferred forthwith to the Superior Court of the County of Sacramento.¹

FACTS

California Commission on Peace Officer Standards and Training (“POST”), a governmental entity, seeks review of an order of respondent court (Hon. Dzintra Janavs), entering judgment on the writ petition of Los Angeles Times Communications LLC (“Times”), requiring POST to release information to Times.

The order is not appealable; an order either directing disclosure of public records or denying disclosure is reviewable by extraordinary writ. (Gov. Code, § 6259, subd. (c); *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425; *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1384.)

We requested that the written opposition² to the petition address the issue of whether the Los Angeles Superior Court has jurisdiction to consider and rule on this matter under Government Code section 6259. We conclude that it does not.

¹ Because we address the jurisdiction of the Los Angeles Superior Court to hear and rule on this matter and do not address the merits, we deny the request for judicial notice without prejudice to renewing the request in the proper forum.

² As there is not a plain, speedy and adequate remedy at law, and in view of the fact that the issuance of an alternative writ would add nothing to the presentation already made, we deem this to be a proper case for the issuance of a peremptory writ of mandate “in the first instance.” (Code Civ. Proc., § 1088; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240-1241; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Opposition was requested and the parties were notified of the court’s intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

BACKGROUND

POST is a governmental entity charged with setting standards for, and training of, peace officers. (Pen. Code, §§ 13500, 13510.) It collects data on peace officers throughout California. POST does not possess personnel files of peace officers.

Relying on the California Public Records Act (“CPRA”), Times formally requested that POST provide information from POST’s electronic database about the hiring and firing of peace officers over the last 10 years. Specifically, Times requested, for every peace officer in California, for the period of 1991 through 2001: the name and birth date, department, new appointment, date of appointment, date of termination and reason for termination.

Relying on statutory law regarding the release of peace personnel information and stating that the request would involve the disclosure of 147,500 records, POST refused.

Times filed a petition for writ of mandate to require POST to release the information. POST demurred, and Times opposed the demurrer.

Respondent court granted that part of Times’ petition requesting that POST disclose, for the period of 1991 through 2001, inclusive, for each peace officer, the peace officer’s name (last, first and middle), department name, appointment date, new appointments, peace officer status, and termination date. Respondent court denied that part of Times’ petition requesting disclosure of each peace officer’s birth date and reason for termination. Respondent court stayed compliance with the writ pending review before this Court.

DISCUSSION

I

“The CPRA was modeled on the federal Freedom of Information Act (FOIA) [citation] and was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the

possession of public agencies. [Citation.] The Legislature has declared that such ‘access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.’ [Citation.] [¶] A state or local agency, upon receiving a request by any person for a copy of public records, generally must determine within 10 days whether the request seeks public records in the possession of the agency that are subject to disclosure. [Citation.] If the agency determines that the requested records are not subject to disclosure, for example because the records fall within a statutory exemption [citation], the agency promptly must notify the person making the request and provide the reasons for its determination. [Citation.]” (*Filarsky v. Superior Court, supra*, 28 Cal.4th at pp. 425-426.)

II

We hold that the Sacramento Superior Court, not Los Angeles Superior Court, has the authority to adjudicate the dispute.

It is undisputed that the records are maintained in Sacramento, where POST’s office is located and where Times directed its initial request.

Jurisdiction over this matter is controlled by Government Code section 6259, subdivision (a), which provides: “Whenever it is made to appear by verified petition ***to the superior court of the county where the records or some part thereof are situated*** that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The ***court shall decide the case after examining the record in camera***, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.” (Emphasis added.)

Government Code section 6259, subdivision (a), is jurisdictional. The petition must be filed in the county where the records are physically located, so

that the superior court may review the records (if permitted) in camera.

Obviously, the legislature did not intend for public records to travel throughout California. The number of records subject to review in this case, 147,500 records, demonstrates the legislature's wisdom in mandating that an action for disclosure of public records be filed and pursued in the county where the records are located.

Contrary to the assertion of Times, Code of Civil Procedure section 401, subdivision (1), which sets forth factors in determining *venue*, does not take precedence over Government Code section 6259, subdivision (a), which is jurisdictional. Code of Civil Procedure section 401, subdivision (1), provides: “Whenever it is provided by any law of this State that an action or proceeding against the State or a department, institution, board, commission, bureau, officer or other agency thereof ***shall or may be commenced in, tried in, or removed to the County of Sacramento***, the same may be commenced and tried in any city or city and county of this State in which the Attorney General has an office.” (Emphasis added.) That section does not permit a superior court to change the place where the matter must be heard. To the contrary, it is clear that Code of Civil Procedure section 401, subdivision (1), is intended to apply whenever an action must (or may) be filed ***in Sacramento***. Government Code section 6259 does not provide that the action be filed ***in Sacramento***, but, rather, in the county ***where the records are physically maintained***.

Contrary to the assertion of Times, Code of Civil Procedure section 393, subdivision (1)(b), sets forth factors to determine *venue* and does not permit the action to remain in Los Angeles Superior Court. Code of Civil Procedure section 393, subdivision (1)(b), provides in pertinent part: “Subject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the cause, or some part thereof, arose, is the proper county for the trial of the following actions: [¶] . . . [¶] (b) Against a public officer or person especially appointed to execute the duties of a public officer, for an act done by

the officer or person in virtue of the office; or against a person who, by the officer's command or in the officer's aid, does anything touching the duties of the officer."

In support of its position that Code of Civil Procedure section 393, subdivision (1)(b), applies, Times cites *Tharp v. Superior Court* (1982) 32 Cal.3d 496, 498, in which a Tulare County car dealer, Tharp Chevrolet-Buick, filed a petition for writs of prohibition and mandate in the Tulare County Superior Court seeking to compel the New Motor Vehicles Board to dismiss proceedings before it that were prefatory to the revocation or suspension of Tharp's permit to sell new cars. Sam W. Jennings, Secretary of the New Motor Vehicles Board, moved to change venue to Sacramento. The trial court granted the motion. The Supreme Court reversed the trial court's order, explaining no statute specifically required that the matter proceed in Sacramento. Because no specific statute required proceedings in a specific county, the general venue statute, Code of Civil Procedure section 393, subdivision (1)(b), applied. Thus, venue of the matter belonged in Tulare County: "[T]he county in which Tharp's cause of action arose was the county in which it carried on its business and would be hurt by the official action--i.e., Tulare County." (*Id.* at p. 502.) Times attempts to analogize its position to that of Tharp, i.e., as it gathers and disseminates news in Los Angeles County, POST's actions are "felt" in Los Angeles County, and venue belongs in Los Angeles County. To the contrary, the issue is not one of venue, but jurisdiction, so it is irrelevant where Times "feels" the effect of POST's actions.

Times also cites *Lipari v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 667, 673, in which a driver, whose license had been suspended after he was determined to have been driving with a blood alcohol level of 0.24, filed a petition in the Superior Court for the City and County of San Francisco for writ of mandate to require the Department of Motor Vehicles to reinstate his license. The trial court dismissed the petition, because it had not been filed in Marin County,

the driver's county of residence. The trial court cited Vehicle Code section 13559, which provides that a person whose license is suspended "may file a petition for review of the order in the court of competent jurisdiction in the person's county of residence." The First District reversed, explaining that Vehicle Code section 13559, subdivision (a), sets forth venue, not jurisdiction. (*Id.* at p. 673.) Thus, the Department of Motor Vehicles was entitled to move to change venue to Marin County, the county of the driver's residence, but the trial court should not have dismissed the petition. (*Ibid.*)

The First District explained in a footnote: "Unless a statute otherwise provides, Code of Civil Procedure section 393, subdivision (1)(b), governs venue in administrative mandamus actions. [Citation.]" (*Lipari v. Department of Motor Vehicles, supra*, 16 Cal.App.4th at p. 670, fn. 2.) Here, of course, Government Code section 6259, subdivision (a), is the statute that "otherwise provides," so that Code of Civil Procedure section 393, subdivision (1)(b), does not, and cannot, apply.

DISPOSITION

THEREFORE, let a peremptory writ issue, commanding respondent superior court to vacate its order of November 1, 2002, granting the writ petition of real party in interest, and to issue an order transferring the matter entitled Los Angeles Times Communications LLC. v. California Commission on Peace Officer

Standards and Training, currently pending as Los Angeles Superior Court case No. BS075943, to the Superior Court of the County of Sacramento, forthwith.

All parties shall bear their own costs.

NOT TO BE PUBLISHED

THE COURT:

SPENCER, P.J.

ORTEGA, J.

MALLANO, J.